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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|---|
| Proceeding | 91239589 |
| Party | Defendant Bowmaker's Whiskey Company |
| Correspondence Address | THEODORE A BREINER BREINER & BREINER LLC 115 NORTH HENRY STREET ALEXANDRIA, VA 22314-2903 UNITED STATES Docketclerk@bbpatlaw.com, tbreiner@bbpatlaw.com, Elisedelatorre@bbpatlaw.com 703-684-6885 |
| Submission | Reply in Support of Motion |
| Filer's Name | THEODORE A. BREINER |
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| Signature | /Theodore A. Breiner/ |
| Date | 10/08/2019 |
| Attachments | Applicants Reply To Opposers Opposition to Motion for Summary Judgment.pdf(2317955 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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|--------------------------------|---|--------------------------|
| MAKER'S MARK DISTILLERY, INC., |) | |
| |) | |
| Opposer, |) | |
| |) | Opposition No. 91239589 |
| v. |) | |
| |) | |
| |) | USSN 87/383,989 |
| |) | Mark: BOWMAKER'S WHISKEY |
| BOWMAKER'S WHISKEY COMPANY, |) | |
| |) | |
| Applicant. |) | |

APPLICANT'S REPLY TO OPPOSER'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Applicant Bowmaker's Whiskey Company ("applicant") replies herein to opposer Maker's Mark Distillery, Inc.'s ("opposer") opposition to applicant's motion for summary judgment. Applicant will reply to the primary points raised in opposer's opposition and lack of reply to any specific point should not be taken as acquiescence.¹

A. THERE IS NO GENUINE DISPUTE AS TO ANY MATERIAL FACT

Opposer has set forth no evidence that there is a genuine dispute as to any material fact for trial. Accordingly, summary judgment is proper in this case.

The sole issue in applicant's motion is the dissimilarity of the parties' respective trademarks as applicant accepts for the purpose of this motion that the parties' goods are the same, the proximity of the goods in the market place, the same channels of

¹ Applicant will use the same abbreviations as in its opening brief, e.g. "the MAKER'S MARK trademarks" means the pleaded trademarks MAKER'S MARK; MAKER'S 46; MAKER'S; and MAKER'S MARK PRIVATE SELECT.

trade, priority of use and the MAKER'S MARK trademark is well known. The parties have submitted evidence as to their respective marks and there is no factual dispute.

1. Opposer Does Not Dispute the Meaning of the Marks at Issue and the Commercial Impressions Conveyed Thereby

Applicant established through the evidence, including dictionary definitions, that the trademark BOWMAKER'S WHISKEY designates a bowmaker, a person who makes bow's, and that the MAKER'S MARK trademarks were inspired by and refer to the branding or mark made by a pewter craftsman. Accordingly, the undisputed evidence is that the parties' respective trademarks have completely different meanings. Additionally, as self-evident, the parties' trademarks sound different, are spelled different and appear different.

2. The Parties Trademarks Must be Considered in Their Entirety

The sole ground argued by opposer as to the alleged similarities of the parties' trademarks is that applicant's trademark BOWMAKER'S WHISKEY includes the descriptive word "maker's" and that this word is in the MAKER'S MARK trademarks. However, as the Board is aware, the parties marks must be taken in their entirety and considered with respect to the meanings of the marks. As set forth above, there is no dispute that applicant's mark BOWMAKER'S WHISKEY designates a bowmaker and opposer's marks designates a branding or mark made by a pewter craftsman. Accordingly, the parties' respective marks convey completely different commercial impressions.²

Further, in considering the parties' respective trademarks, the word "Bow" in applicant's mark is the dominant portion of applicant's mark followed by the descriptive word "makers." This further serves to distinguish applicant's mark from the MAKER'S

² Opposer's reliance on *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456 (7th Cir. 2000) is misplaced as, inter alia, the PROZAC mark was an arbitrary and fanciful mark with no meaning, unlike the MAKER'S MARK trademarks which have a meaning as seen in the dictionary definitions.

MARK trademarks.

As set forth in applicant's opening brief, the decision in *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373 (Fed. Cir. 1998) is directly on point, and the applicant's mark CRYSTAL CREEK included the entire mark CRISTAL of the opposer.

B. A TRADEMARK CLEARANCE SEARCH IS IRRELEVANT
TO THE MOTION FOR SUMMARY JUDGMENT

Opposer argues that applicant did not conduct a trademark clearance search. A trademark clearance search is not relevant to the motion for summary judgment and applicant did in fact conduct a trademark clearance search as known by opposer.

Opposer's Rule 56(d) motion requested discovery with respect to a trademark clearance search and the Board denied the motion, thereby finding that a trademark clearance search is not relevant to the present motion for summary judgment. Specifically, opposer's Document Request No. 12 requested all documents with respect to a clearance search; Interrogatory No. 10 referenced information concerning a trademark clearance search; and Request For Admissions Nos. 13 and 14 requested admissions concerning a trademark clearance search. 12 TTABVue Exhibits 3-5 (pages 24-55). The Board denied opposer's request for further discovery concerning a trademark clearance search.

Additionally, Mr. Parks testified during his deposition that his graphic designer did in fact conduct a trademark clearance search through Trademarkia. Decl. Assmus, Exh. B-1, page 18, line 7 – page 21, line 14.

Additionally, the U.S. Patent and Trademark Office examiner conducted a search of the BOWMAKER'S WHISKEY trademark and found no confusingly similar trademarks, including the MAKER'S MARK trademarks.

Accordingly, opposer's arguments with respect to applicant not conducting a

trademark search are not relevant and are contrary to the evidence of record.³

C. APPLICANT'S OBJECTIONS TO OPPOSER'S EVIDENCE

Applicant objects to opposer's evidence on the grounds set forth hereafter in order to preserve applicant's rights. However, applicant respectfully submits whether the evidence is considered or not, summary judgment is proper in this case as set forth in applicant's motion and herein.

1. Declaration of Nathalie Phillips

Applicant objects to the following evidence from Ms. Phillips:

(a) The declaration states at paragraph 3 that it is made "to the best of my personal knowledge." A declaration must be made based on personal knowledge. F. R. Evid. 602 ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter"). Applicant does not know what "the best of my personal knowledge" means, e.g. does she believe that it appears to be true.

(b) Applicant objects to paragraph 5 directed to market studies as there is no foundation for this testimony and none of the underlining market studies have been submitted for applicant or the Board to consider. Additionally, applicant requested the production of documents from opposer, including opposer's market studies and documents which opposer intended to rely upon in support of its allegations of no likelihood of confusion, and opposer has produced no documents to applicant. Attached as Exhibit 23 to the Declaration of Breiner is opposer's responses to applicant's document requests. See Document Request

³ Opposer also argues that applicant's non-live Website included generic wording from the Maker's Mark Website with respect to the verification of age before entering the site. Applicant acknowledges that its graphic designer used the Maker's Mark age verification as a template without applicant's knowledge or direction, and this has been changed. This has no bearing on the differences in the trademarks BOWMAKER'S WHISKEY and the MAKER'S MARK trademarks.

Nos. 10, 16 and 5.

(c) Applicant objects to paragraph 6 directed to sales figures as there is no foundation for this testimony and none of the underlining materials have been submitted for applicant or the Board to consider. Additionally, applicant requested the production of documents from opposer, including opposer's sales figures and documents which opposer intended to rely upon in support of its allegations of no likelihood of confusion, and opposer has produced no documents to applicant. See Exhibit 23, Document Request Nos. 18, 16 and 5.

(d) Applicant objects to paragraph 7 directed to sales figures as there is no foundation for this testimony and none of the underlining materials have been submitted for applicant or the Board to consider. Additionally, applicant requested the production of documents from opposer, including opposer's sales figures and documents which opposer intended to rely upon in support of its allegations of no likelihood of confusion, and opposer has produced no documents to applicant. See Exhibit 23, Document Request Nos. 18, 16 and 5.

(e) Applicant objects to paragraph 8 directed to sales figures as there is no foundation for this testimony and none of the underlining materials have been submitted for applicant or the Board to consider. Additionally, applicant requested the production of documents from opposer, including opposer's sales figures and documents which opposer intended to rely upon in support of its allegations of no likelihood of confusion, and opposer has produced no documents to applicant. See Exhibit 23, Document Request Nos. 18, 16 and 5.

(f) Applicant objects to paragraph 9 directed to advertising expenditures as

there is no foundation for this testimony and none of the underlining materials have been submitted for applicant or the Board to consider. Additionally, applicant requested the production of documents from opposer, including opposer's advertising expenditures and documents which opposer intended to rely upon in support of its allegations of no likelihood of confusion, and opposer has produced no documents to applicant. See Exhibit 23, Document Request Nos. 19, 16 and 5.

2. Declaration of Richard M. Assmus

Applicant objects to the following evidence from Mr. Assmus:

(a) Applicant objects to paragraph 6 and Exhibit B-5. The letter of Mr. Samuels to Mr. Park's is hearsay and is Rule 408, F. R. Evid. correspondence. If the letter is to come in, applicant attaches hereto applicant's January 10, 2018 letter to which Mr. Samuels was responding and applicant's responsive letter dated February 26, 2018. See Declaration of Breiner, Exhibits 24-25.

(b) Applicant objects to paragraph 7 and Exhibit B-6 on the grounds of hearsay. Opposer could have had someone from opposer testify as to the substance of this article.

D. CONCLUSION

For the reasons set forth in applicant's opening brief and herein, there are no genuine issues of material fact in dispute and applicant is entitled to summary judgment on the grounds that applicant's mark BOWMAKER'S WHISKEY and opposer's MAKER'S MARK trademarks are not confusingly similar due to the differences in meanings, pronunciation, spelling and the commercial impressions conveyed thereby. Judgment in favor of applicant is respectfully requested.

Respectfully submitted,

BOWMAKER'S WHISKEY COMPANY

By /Theodore A. Breiner/
Theodore A. Breiner
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115 North Henry Street
Alexandria, Virginia 22314-2903
Telephone (703) 684-6885

Attorneys for Applicant
Bowmaker's Whiskey Company

October 8, 2019

CERTIFICATE OF SERVICE

It is hereby certified that on this 8th day of October 2019, a true copy of the
foregoing paper entitled –

APPLICANT'S REPLY TO OPPOSER'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

was served by email on -

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/Theodore A. Breiner/
THEODORE A. BREINER

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| |) | |
| Applicant. |) | |


DECLARATION OF THEODORE A. BREINER

Theodore A. Breiner declares that:

1. I am counsel for applicant Bowmaker's Whiskey Company. I have personal knowledge of the facts set forth in this declaration.
2. Attached hereto as Exhibit 23 is a true and correct copy of "Opposer's Objections And Responses To Applicant's First Request For The Production Of Documents."
3. Attached hereto as Exhibit 24 is a true and correct copy of a letter dated January 10, 2018 from Breiner & Breiner, L.L.C. to Leydig, Voit & Mayer, Ltd.
4. Attached hereto as Exhibit 25 is a true and correct copy of a letter dated February 26, 2018 from Breiner & Breiner, L.L.C. to Leydig, Voit & Mayer, Ltd.

I declare under penalty of perjury that the foregoing is true and correct.

October 8, 2019


Theodore A. Breiner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| |) | Serial No. 87/383,989 |
| Applicant. |) | Mark: BOWMAKER'S WHISKEY |

**OPPOSER'S OBJECTIONS AND RESPONSES TO
APPLICANT'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 406 and 410 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Maker's Mark Distillery, Inc. ("Maker's"), by its attorneys, hereby objects and responds to Applicant's First Request for the Production of Documents (the "Requests"), propounded by Bowmaker's Whiskey Company ("Applicant" or "Bowmaker's"), as follows:

PRELIMINARY STATEMENT

1. Maker's is willing to meet and confer with Applicant at a mutually agreeable time to discuss the Requests and Maker's objections and responses thereto and to resolve any disputes or disagreements in connection therewith.
2. Inadvertent production of any document or information protected from disclosure by the attorney-client privilege, the joint defense privilege, the work-product doctrine or any other applicable privilege or protection is not intended to be a waiver of such privileges or protections in whole or in part.

3. The objections and responses herein are made solely for the purpose of this action. Maker's objections and responses are not intended to waive or prejudice any objections that Maker's may assert now or in the future, including objections to the relevance of the subject matter of any discovery request, or to the admissibility of any response or document or category of responses or documents. Maker's expressly reserves any and all rights and privileges under the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the rules of the United States Trademark Trial and Appeal Board, and any other applicable rule or law. The failure to assert such rights and privileges, or the inadvertent disclosure by Maker's of information protected by such rights or privileges, shall not constitute a waiver thereof, either with respect to these responses, the subject matter thereof, or with respect to any future discovery responses or objections.

4. No incidental or implied admissions are intended by the responses herein. The fact that Maker's has answered or objected to any request should not be taken as an admission that Maker's accepts or admits the existence of any "fact" set forth or assumed by such request. That Maker's has answered all or part of any request is not intended to be, and shall not be construed to be, a waiver by Maker's of any objection to any request, or any portion of any request.

5. To the extent that Applicant can identify authority that contradicts any objection Maker's makes below, Maker's is willing to reconsider that objection in light of that authority.

6. Maker's responses are based upon information presently available to and located by Maker's. Maker's has not completed investigation of the facts relating to this case, discovery in this action, or its preparation for trial. The responses are given without prejudice to Maker's right to produce evidence of any additional facts. As such, these responses are subject to

supplementation and amendment as discovery in this case progresses, should future investigation or discovery indicate that supplementation or amendment is necessary. Maker's reserves the right to make any use of, or introduce at any hearing or trial, information or documents that are responsive to these requests, but discovered subsequent to Maker's service of these responses, including, but not limited to, any information or documents obtained in discovery herein.

7. Maker's search for responsive documents and information is ongoing. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, Maker's specifically reserves the right to supplement its productions in response to the Requests and, if necessary, to assert additional objections arising from further investigation.

GENERAL OBJECTIONS

In addition to the specific objections set forth in Maker's response to the each Request, the following objections apply to all of Applicant's Definitions and the Requests ("General Objections"), which are hereby incorporated by reference into the individual responses to the Requests, and shall have the same force and effect as if fully set forth in the responses to the Requests. Maker's objects as follows:

1. Maker's objects to each Request to the extent that it purports to impose upon Maker's discovery obligations that exceed those provided for in the Federal Rules of Civil Procedure, the rules of the United States Trademark Trial and Appeal Board, and any other applicable rule or law.

2. Maker's objects to the Requests to the extent that they seek to impose requirements or obligations on Maker's in addition to or different from those imposed by the Federal Rules of Civil Procedure, the rules of the United States Trademark Trial and Appeal Board, and any other applicable rule or law. Maker's will not undertake, assume, or comply with

the Requests to the extent they exceed the Federal Rules of Civil Procedure or the rules of the United States Trademark Trial and Appeal Board. Maker's responses to such Requests shall not be construed as an admission, agreement, or acquiescence in any such Request. Maker's hereby incorporates all objections, including the General Objections, set forth in its Opposer's Objections and Responses to Applicant's First Set of Interrogatories.

3. Maker's objects to the Requests as having no specified relevant time period. Applicant attempts to impose production obligations that are excessive, overly broad, and unduly burdensome, particularly given that the trademark application that is the subject of this opposition was not filed until March 24, 2017.

4. Maker's objects to any Request to the extent that it is vague, ambiguous, confusing, overly broad and unduly burdensome. For example, Maker's objects to the extent the Requests seek documents regarding all surveys, public opinion polls, or market research concerning any matter relating to Maker's marks, which is unduly burdensome given that Maker's has been using MAKER'S MARK in connection with whiskey since at least as early as November 1, 1957.

5. Maker's objects to any Request to the extent that it seeks information that is not relevant to the subject matter of this proceeding. Maker's objections and responses are not intended and should not be construed as an acknowledgement of relevance.

6. Maker's objects to any Request to the extent that it seeks information that is protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which is otherwise immune from discovery pursuant to any applicable law or rule. Nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any attorney-client, work product, investigative information,

common interest, and/or consulting expert's privilege or any other applicable privileges, immunities, or exceptions, and to the extent that any Request may be construed as calling for disclosure of information, documents, and/or things protected by such privileges or doctrines, a continuing objection to each and every such Request is hereby asserted.

7. Maker's objects to any Request as overly broad and unduly burdensome to the extent that it seeks information already available to Applicant, available from public agency records, or otherwise in the public domain and accessible to both parties, or where the burden of obtaining, deriving, or ascertaining the responsive documents is substantially the same for Applicant as it is for Maker's.

8. Maker's objects to any Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties in the absence of a protective order entered in this case.

9. Maker's objects to any Request to the extent it seeks confidential and proprietary information, including trade secrets and competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials.

10. Maker's objects to any Request as improper to the extent multiple subparts, whether specifically enumerated or otherwise, are asserted as a single Request.

11. Maker's objects to any Request to the extent that it seeks information that is not known or reasonably available to Maker's, or that is not within Maker's possession, custody, or control, or calls for Maker's to prepare documents and/or things that do not already exist. In responding to each Request, Maker's understands the Request as seeking only information that is in Maker's possession, custody, or control.

12. Maker's objects to these Requests to the extent that they seek to impose an obligation to identify or search for information or documents at any location, or from any source other than where they would reasonably be expected to be stored in the ordinary course of business.

13. Maker's discovery and investigation in connection with this case are ongoing. As a result, Maker's responses concern information obtained and reviewed to date, and the objections, limitations, and responses contained in this Response are subject to and without waiver of any right of Maker's to: (a) object to other discovery requests directed to the subject matter of the Requests and this Response; (b) make additional or supplementary objections to the Requests; and (c) revise, correct, supplement, or clarify the contents of this Response, after considering information obtained or reviewed through further discovery and investigation.

14. No objection, limitation, or response, or lack thereof, made herein shall be deemed an admission by Maker's as to the existence or non-existence of any information or documents, and shall not be construed in any way as an admission that any definition provided by Applicant is either factually correct or legally binding upon Maker's, or as a waiver of any of Maker's objections, including but not limited to objections regarding discoverability of documents or other evidence. Maker's enumeration of specific objections in response to each Request is not, and should not be construed to be, a waiver of any objection not so specified.

15. By identifying or producing any information, documents or things in response to any Request, Maker's does not stipulate, and expressly reserves all objections, to the authenticity, relevance, materiality, and admissibility of any such documents or things.

16. If Maker's produces information in response to any Request, Maker's reserves the right to produce additional information or documents that may come to its attention or become

available in the future or to use such information or documents in any hearing or proceeding in this or any other action.

17. Maker's objects to each Request to the extent it seeks "all" subject matter as overbroad and unduly burdensome. "All" shall be understood to mean the information that Maker's is able to locate using reasonable diligence and judgment concerning the whereabouts of responsive information and documents. Such phraseology should not be construed as a representation that each and every piece of information in the possession of Maker's has been examined in connection with these responses or any production pursuant thereto.

SPECIFIC OBJECTIONS AND RESPONSES

Request No. 1:

All documents referring or relating to applicant and applicant's trademark BOWMAKER'S WHISKEY.

Response to Request No. 1:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to Applicant's lack of specificity in terms of a relevant time period. Maker's objects to this Request to the extent it seeks documents that are equally available to Applicant from public records including USPTO records, where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule.

Subject to these Specific Objections and the General Objections, Maker's will produce non-privileged documents located after a reasonable search.

Request No. 2:

All documents referring to or relied upon by opposer in support of the notice of opposition.

Response to Request No. 2:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request to the extent it seeks documents that are equally available to Applicant from public records including USPTO records, where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule.

Subject to these Specific Objections and the General Objections, Maker's will produce non-privileged documents relied upon in its notice of opposition.

Request No. 3:

All documents referring or relating to the conception, design, selection, approval, or adoption of Opposer's Marks.

Response to Request No. 3:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome, particularly given that MAKER'S MARK was adopted in the 1950s. Priority is not at issue as Maker's is clearly the senior user. Accordingly, information about Maker's selection of its marks is irrelevant, and producing such information would be unduly burdensome. Maker's further objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 4:

Representative documents referring or relating to opposer's first use of the Opposer's Marks anywhere and in interstate commerce.

Response to Request No. 4:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to this Request to

the extent it seeks information that is irrelevant to the present opposition proceeding since priority is not at issue, particularly given that MAKER'S MARK was adopted in the 1950s. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 5:

All documents listed in opposer's initial disclosures.

Response to Request No. 5:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule.

Subject to these Specific Objections and the General Objections, Maker's will produce documents identified in Opposer's Initial Disclosures.

Request No. 6:

All documents referring or relating to any application to register or registration of Opposer's Marks.

Response to Request No. 6:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 7:

All articles, publications, trade publications, etc. referring or relating to Opposer's Marks.

Response to Request No. 7:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without

limitation, “predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privy with opposer”) as unduly burdensome and overly broad. Maker’s objects to the request to identify “all” documents as overbroad and unduly burdensome. Maker’s objects to this Request to the extent it seeks documents that are available to Applicant from public records, where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker’s.

Subject to these Specific Objections and the General Objections, Maker’s will produce sufficient documents to demonstrate use in commerce of the Opposer trademarks in this proceeding.

Request No. 8:

All documents which opposer intends to rely on during its testimony period in support of its case and all documents referring or relating to such documents.

Response to Request No. 8:

Maker’s incorporates by reference the Preliminary Statement and General Objections set forth above. Maker’s objects to the request to identify “all” documents as overbroad and unduly burdensome. Maker’s objects to this Request to the extent it seeks documents that are available to Applicant from public records, where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker’s. Maker’s further objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert’s privilege or which are otherwise immune from discovery pursuant to any applicable law or rule.

Subject to these Specific Objections and the General Objections, Maker’s will produce documents it intends to rely on in this proceeding.

Request No. 9:

Samples showing the manner in which opposer uses Opposer's Marks for each of its products and/or services.

Response to Request No. 9:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad.

Subject to these Specific Objections and the General Objections, Maker's will produce sample use in commerce of the Opposer trademarks that are included in this proceeding.

Request No. 10:

All surveys, public opinion polls, or market research concerning any matter relating to Opposer's Marks or the trademark BOWMAKER'S WHISKEY of applicant.

Response to Request No. 10:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "[a]ll surveys, public opinion polls, or market research" as overbroad and unduly burdensome. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent it requests production of documents that are

protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 11:

All license agreements under which opposer has licensed another to use Opposer's Marks and all documents referring or relating thereto.

Response to Request No. 11:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all license agreements" as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's

privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 12:

All documents referring or relating to opposer's enforcement or attempted enforcement of Opposer's Marks.

Response to Request No. 12:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or

which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 13:

All documents referring or relating to any litigation, opposition or cancellation proceeding involving Opposer's Marks.

Response to Request No. 13:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden

associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 14:

All documents referring or relating to opposer's allegation that opposer will be damaged by applicant's registration of the trademark BOWMAKER'S WHISKEY.

Response to Request No. 14:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly

sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule.

Subject to these Specific Objections and the General Objections, Maker's will produce sufficient documents to support Opposer's damages in this proceeding.

Request No. 15:

All documents between opposer and any third party relating to applicant.

Response to Request No. 15:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or

which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 16:

All documents referring or relating to any likelihood of confusion between opposer's products sold under Opposer's Marks and applicant's BOWMAKER'S WHISKEY products.

Response to Request No. 16:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the

United States Patent and Trademark Office (“USPTO”), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker’s.

Subject to these Specific Objections and the General Objections, Maker’s will produce sufficient documents to demonstrate a likelihood of confusion.

Request No. 17:

All documents referring or relating to any actual confusion between opposer’s products or services sold under Opposer’s Marks and applicant’s BOWMAKER’S WHISKEY products.

Response to Request No. 17:

Maker’s incorporates by reference the Preliminary Statement and General Objections set forth above. Maker’s objects to Applicant’s definition of “Opposer” (which includes, without limitation, “predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer”) as unduly burdensome and overly broad. Maker’s objects to the request to identify “all” documents as overbroad and unduly burdensome. Maker’s also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker’s objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert’s privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker’s objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office (“USPTO”), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker’s.

Subject to these Specific Objections and the General Objections, Maker's will produce sufficient documents to demonstrate actual confusion.

Request No. 18:

Representative documents which summarize the total sales by year of products sold by opposer under Opposer's Marks for the last five years.

Response to Request No. 18:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding.

Subject to these Specific Objections and the General Objections, Maker's will produce sufficient documents to demonstrate sales of MAKER'S MARK whiskey.

Request No. 19:

Representative documents which summarize the total advertising expenditures by opposer for products using Opposer's Marks for the last five years.

Response to Request No. 19:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding.

Subject to these Specific Objections and the General Objections, Maker's will produce sufficient documents to demonstrate advertising of the MAKER'S MARK whiskey product.

Request No. 20:

All correspondence sent by or on behalf of opposer objecting to another's use of a name asserted to be confusingly similar to Opposer's Marks.

Response to Request No. 20:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to Applicant's definition of "Opposer" (which includes, without limitation, "predecessors, subsidiaries, divisions, officers, attorneys, and all other persons in privity with opposer") as unduly burdensome and overly broad. Maker's objects to the request to identify "all" correspondence as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 21:

All documents evidencing opposer's agreement to another's use of a name using the words "Maker's," "Maker" or "Mark."

Response to Request No. 21:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored

request in its place, Maker's cannot and will not produce any documents in response to this Request.

Request No. 22:

All documents identified in response to applicant's first set of interrogatories to opposer.

Response to Request No. 22:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome.

Subject to these Specific Objections and the General Objections, Maker's will produce documents identified in response to Applicant's First Set of Interrogatories.

Request No. 22:

All documents referring or relating to the third party use and/or registration of names using the term "Maker's," "Maker" or "Mark" in the attached Exhibits 1-22, TESS copies of registrations for these trademarks.

Response to Request No. 22:

Maker's incorporates by reference the Preliminary Statement and General Objections set forth above. Maker's objects to the request to identify "all" documents as overbroad and unduly burdensome. Maker's objects to this Request as vague and ambiguous concerning the relevant time period, and unduly burdensome and overly broad. Maker's further objects to this Request to the extent that it seeks information that Maker's is not permitted to disclose pursuant to confidentiality obligations or agreements with third parties. Maker's also objects to this Request to the extent it seeks confidential and proprietary information, including competitively sensitive business information, where any purported marginal benefits of production of the requested

information are outweighed by the burden associated with producing such highly sensitive materials. Maker's objects to this Request to the extent it requests production of documents that are protected by the attorney-client, work product, investigative information, common interest, and/or consulting expert's privilege or which are otherwise immune from discovery pursuant to any applicable law or rule. Maker's objects to this Request to the extent it seeks documents that are available to Applicant from public records, such as the records of the United States Patent and Trademark Office ("USPTO"), where the burden of obtaining such documents is substantially the same for Applicant as it is for Maker's. Maker's further objects to this Request to the extent it seeks information that is irrelevant to the present opposition proceeding. In light of the foregoing, unless or until Applicant revises this Request, or serves a properly tailored request in its place, Maker's cannot and will not produce any documents in response to this Request.

September 19, 2018

Respectfully submitted,

By: /s/ Richard M. Assmus

Michael D. Adams
Richard M. Assmus
Daniel P. Virtue
MAYER BROWN LLP
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8623

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that, on the 19th day of September, of 2018, the foregoing Opposer's Objections and Responses to Applicant's First Set of Requests for Production of Documents were sent via email on counsel for Applicant at the following addresses:

THEODORE A BREINER
BREINER & BREINER LLC
115 NORTH HENRY STREET
ALEXANDRIA, VA 22314-2903
UNITED STATES
tbreiner@bbpatlaw.com

Respectfully submitted,

By: /s/ Richard M Assmus _____

Michael D. Adams
Richard M. Assmus
Daniel P. Virtue
MAYER BROWN LLP
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8623

Attorneys for Opposer

BREINER & BREINER, L.L.C.

ATTORNEYS AT LAW

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ALFRED W. BREINER
(1928-2002)

THEODORE A. BREINER

MARY J. BREINER

TELEPHONE (703) 684-6885
FACSIMILE (703) 684-8206

PATENTS, TRADEMARKS
& COPYRIGHTS

January 10, 2018

VIA EMAIL AND U.S. MAIL

Claudia W. Stangle, Esquire
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601

Re: Bowmaker's Whiskey Company
Your Ref.: 730767
Our Reference: S-4249

Dear Claudia,

It was nice speaking with you on December 28, 2017.

In preface, Bowmaker's Whiskey Company understands the importance of trademarks and respects the trademark rights of others, including those of Maker's Mark Distillery, Inc. Mr. Parks of Bowmaker's Whiskey Company attended the Moonshine University five day Conference on Distilling in Louisville, Kentucky where Mr. Bill Samuels, Jr. was a speaker, a picture attached hereto as Exhibit 1. Mr. Parks has the utmost respect for MAKER'S MARK whiskey and has no intention of trading on the MAKER'S MARK brand as discussed below.

In accordance with our discussion, enclosed as Exhibits 2 and 3 are two proposed labels for the BOWMAKER'S WHISKEY product. These labels have not yet been submitted for approval. As we discussed, the BOWMAKER'S WHISKEY name is based on Mr. Parks' hobby of being a bowmaker. Thus, the label emphasizes the nature of a bow and a bowmaker.

As we advised, it is our opinion that there is no likelihood of confusion between the trademark BOWMAKER'S WHISKEY and the MAKER'S MARK trademark due to at least the

differences in the pronunciation and spelling of the respective trademarks and the differences in the commercial impressions conveyed thereby. This is in accord with the Trademark Office allowance of the BOWMAKER'S WHISKEY trademark, including over the MAKER'S MARK trademark. At this time, we will not specifically further address the likelihood of confusion issue based on our agreement and your knowledge and expertise of the pertinent trademark law.

It is our understanding that you will review the above with your client and respond back to us.

If you have any questions concerning the above or would like to discuss the matter by telephone, please let us know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ted Breiner".

THEODORE A. BREINER

TAB/evd

Enclosure - Exhibits 1-3

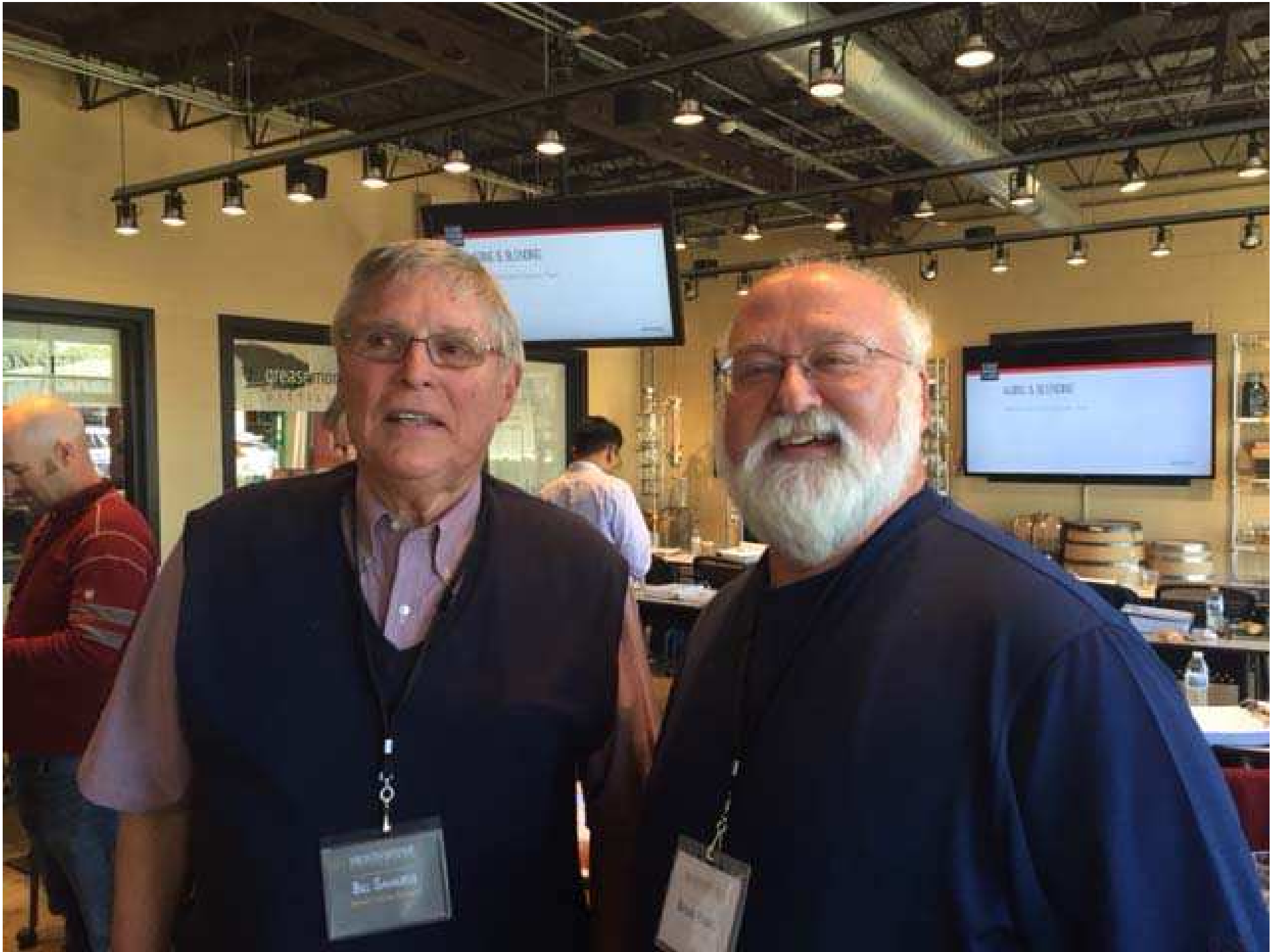


Exhibit 1

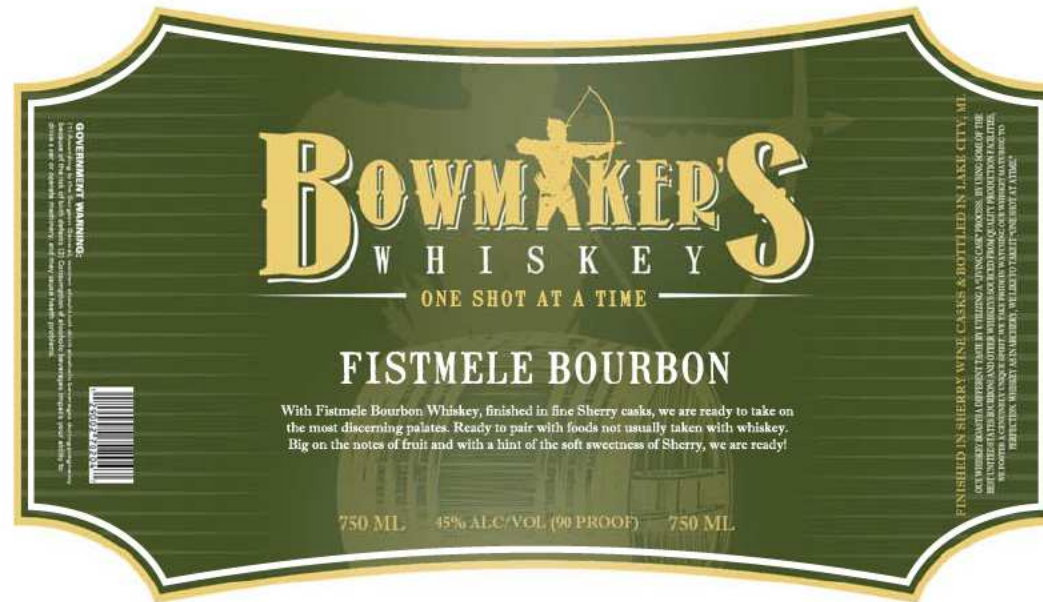


Exhibit 2



HAND CRAFTED RYE

BOWMAKER'S WHISKEY

ONE SHOT AT A TIME®

FLETCHER'S RYE WHISKEY

With Fletcher's Rye Whiskey we finish the whiskey
in rum casks, allowing for a rich taste that spins correctly for you.

Changes like these can allow a whiskey to hit marks like
pairing to different foods or events.

We want this whiskey to be perfect for the palate looking for difference.

750 ML

45% ALC/VOL (90 PROOF)

750 ML

GOVERNMENT WARNING:
1) Alcoholism is a disease that can destroy a person's health, mind, and family. 2) Drinking too much alcohol can lead to alcoholism. 3) Drinking too much alcohol can lead to liver disease, heart disease, and many other health problems. 4) Drinking too much alcohol can lead to accidents and injuries. 5) Drinking too much alcohol can lead to death. 6) Drinking too much alcohol can lead to legal problems. 7) Drinking too much alcohol can lead to financial problems. 8) Drinking too much alcohol can lead to social problems. 9) Drinking too much alcohol can lead to personal problems. 10) Drinking too much alcohol can lead to all of the above.



FINISHED IN RUM CASKS & BOTTLED BY BOWMAKER'S WHISKEY CO. IN LAKE CITY, MI.

OUR WHISKEY BOASTS A DIFFERENT TASTE BY UTILIZING A "LIVING CASK" PROCESS. BY USING SOME OF THE
BEST UNITED STATES BOURBONS AND OTHER WHISKIES SOURCED FROM QUALITY PRODUCTION FACILITIES,
WE FOSTER A GENUINELY UNIQUE SPIRIT. WE TAKE PRIDE IN WATCHING OUR WHISKEY MATURING TO
PERFECTION. WHISKEY AS AN ARCHERY, WE LIKE TO TAKE IT "ONE SHOT AT A TIME."

BREINER & BREINER, L.L.C.

ATTORNEYS AT LAW

115 NORTH HENRY STREET

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ALFRED W. BREINER
(1928-2002)

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PATENTS, TRADEMARKS
& COPYRIGHTS

February 26, 2018

VIA EMAIL AND U.S. MAIL

Claudia W. Stangle, Esquire
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601

Re: Maker's Mark Distillery, Inc.
v. Bowmaker's Whiskey Company
Opposition No. 91239589

Dear Claudia,

This is further to our letter of January 10, 2018
and in response to Mr. Rob Samuels letter dated February 14,
2018 to our client.

In preface, Bowmaker's Whiskey Company
("Bowmaker's") and Mr. Parks thank Mr. Samuels for his letter
and his kind offer of hosting Mr. Parks and his wife at
Maker's Mark in return for Bowmaker's agreement to change its
trademark BOWMAKER'S WHISKEY. As discussed below, Mr. Parks
respectfully declines as the BOWMAKER'S WHISKEY trademark is
too important to Bowmaker's.

As set forth in our letter of January 10, 2018, it
is our opinion that there is no likelihood of confusion
between the trademarks BOWMAKER'S WHISKEY and MAKER'S MARK due
to at least the differences in the trademarks and the
commercial impressions conveyed thereby. See Champagne Louis
Roederer S.A. v. Delicato Vineyards, 148 F.3d 1373 (Fed. Cir.
1998) (no likelihood of confusion between CRISTAL for
champagne and CRYSTAL CREEK for wine based on dissimilarity of
marks alone). Additionally, purchasers of bourbon and whiskey
are sophisticated and exercise a reasonable degree of care and

February 26, 2018

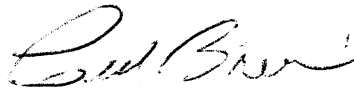
there will be no likelihood of confusion. See, e.g., Sazerac Co. v. Fetzer Vineyards, Inc., 2017 U.S. Dist. LEXIS 153510, N.D. Cal. Sept. 17, 2017, p. 12 Finding of Fact 65, pp. 21-22 Conclusion of Law 8 (finding that wine consumers exercise a goods deal of care in purchasing wine). Additionally, there are a number of trademarks which have been allowed using the word "Maker" or variations thereof in International Class 33.

Additionally, Bowmaker's has spent substantial time and money in developing the BOWMAKER'S WHISKEY brand and business. Bowmaker's estimates that it has spent at least \$200,000. Accordingly, Bowmaker's cannot agree to change its brand name under the circumstances.

Based on the above, we request that Maker's Mark reconsider its position and withdraw the Notice of Opposition.

If you have any questions concerning the above, or would like to discuss the matter further by telephone, please let us know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ted Breiner".

THEODORE A. BREINER

TAB/cjd